
By: **Senator McFadden**

Introduced and read first time: January 31, 2003

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Procedure - Electronic Video and Audio Recording of Witnesses in**
3 **Murder and Attempted Murder Investigations**

4 FOR the purpose of authorizing a State's Attorney to make electronic video and audio
5 recordings of certain witnesses to certain alleged crimes during questioning of
6 the witnesses and with the consent of the witnesses under certain
7 circumstances; establishing that certain statements by certain witnesses are
8 admissible as evidence against a defendant in a trial for certain alleged crimes
9 under certain circumstances; and generally relating to the recording of certain
10 witnesses to certain alleged crimes under certain circumstances.

11 BY adding to

12 Article - Courts and Judicial Proceedings

13 Section 9-501 to be under the new subtitle "Subtitle 5. Electronic Recording of
14 Witnesses"

15 Annotated Code of Maryland
16 (2002 Replacement Volume)

17 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
18 MARYLAND, That the Laws of Maryland read as follows:

19 **Article - Courts and Judicial Proceedings**

20 **SUBTITLE 5. ELECTRONIC RECORDING OF WITNESSES.**

21 9-501.

22 (A) AS PART OF A STATE'S ATTORNEY'S INVESTIGATION OF AN ALLEGED
23 VIOLATION OF TITLE 2, SUBTITLE 2 OF THE CRIMINAL LAW ARTICLE, A STATE'S
24 ATTORNEY MAY, WITH THE CONSENT OF THE WITNESS, MAKE AN ELECTRONIC
25 VIDEO AND AUDIO RECORDING OF A WITNESS TO THE ALLEGED OFFENSE DURING
26 THE STATE'S ATTORNEY'S QUESTIONING OF THE WITNESS.

27 (B) AN ORAL, WRITTEN, OR SIGN LANGUAGE STATEMENT OF A WITNESS MADE
28 AS A RESULT OF QUESTIONING BY A STATE'S ATTORNEY AS PART OF THE STATE'S

1 ATTORNEY'S INVESTIGATION OF AN ALLEGED VIOLATION OF TITLE 2, SUBTITLE 2 OF
2 THE CRIMINAL LAW ARTICLE IS ADMISSIBLE AS EVIDENCE AGAINST A DEFENDANT
3 IN A TRIAL FOR AN ALLEGED VIOLATION OF TITLE 2, SUBTITLE 2 OF THE CRIMINAL
4 LAW ARTICLE IF:

5 (1) AN ELECTRONIC VIDEO AND AUDIO RECORDING OF THE STATEMENT
6 IS MADE;

7 (2) THE WITNESS HAS CONSENTED TO THE RECORDING AND INDICATES
8 THE CONSENT AS PART OF THE RECORDING;

9 (3) BEFORE THE QUESTIONING BUT DURING THE RECORDING, THE
10 WITNESS IS INFORMED BY THE STATE'S ATTORNEY THAT:

11 (I) THE WITNESS HAS THE RIGHT TO REFUSE TO BE RECORDED;

12 (II) THE WITNESS HAS THE RIGHT TO REMAIN SILENT, BUT IF THE
13 WITNESS DOES NOT REMAIN SILENT ANY STATEMENT OR RESPONSES BY THE
14 WITNESS MAY BE USED AS EVIDENCE AGAINST THE WITNESS AT ANY CRIMINAL
15 TRIAL; AND

16 (III) THE WITNESS HAS THE RIGHT TO HAVE AN ATTORNEY
17 PRESENT DURING THE QUESTIONING TO ADVISE THE WITNESS;

18 (4) THE WITNESS MAKES AN OATH DURING THE RECORDING UNDER
19 THE PENALTY OF PERJURY THAT THE RESPONSES OF THE WITNESS ARE TRUTHFUL
20 AND ACCURATE;

21 (5) AN ATTORNEY FROM THE OFFICE OF THE PUBLIC DEFENDER IS
22 PRESENT DURING THE QUESTIONING OF THE WITNESS BY THE STATE'S ATTORNEY
23 AND HAS AN OPPORTUNITY TO CROSS-EXAMINE OR IMPEACH THE CREDIBILITY OF
24 THE WITNESS THROUGH QUESTIONING THAT WILL BE RECORDED IN ORDER TO
25 PROTECT THE RIGHTS OF ANY POTENTIAL ALLEGED OFFENDER;

26 (6) THE RECORDING IS ACCURATE AND HAS NOT BEEN ALTERED;

27 (7) THE RECORDING IS PRESERVED AND MAINTAINED BY THE OFFICE
28 OF THE STATE'S ATTORNEY IN A DOCUMENTED CHAIN OF CUSTODY;

29 (8) THE RECORDING IS MADE AVAILABLE TO A DEFENDANT AND LEGAL
30 COUNSEL TO THE DEFENDANT IF THE DEFENDANT IS CHARGED WITH AN ALLEGED
31 VIOLATION OF TITLE 2, SUBTITLE 2 OF THE CRIMINAL LAW ARTICLE; AND

32 (9) THE WITNESS IS UNAVAILABLE TO TESTIFY AT THE TRIAL DUE TO
33 THE DEATH OF THE WITNESS.

34 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
35 October 1, 2003.